

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No.477/Ind/2025
(AY: 2015-16)

Directorate of Urban Administrations & Development, Nagar Palika Bhawan, 6 No.Bus Stop, R.S.Market, S.O. Huzur, Bhopal(M.P.) (TAN: BPLDO1618B)	बनाम/ Vs.	Deputy Commissioner of Income Tax-TDS, Bhopal
(Appellant)		(Respondent)
Assessee by	Shri Sapan Usrethe, Adv. & Ms. Apoorva Garg, CA	
Revenue by	Shri Anup Singh, CIT DR	
Date of Hearing	21.01.2026	
Date of Pronouncement	30.01.2026	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an Appeal filed by the Assessee under section 253 of the income tax Act 1961,[herein after referred to as the Act for the sake of brevity] before this Tribunal as & by way of second appeal. The Assessee is aggrieved by the order bearing Number:-ITBA/APL/S/250/2024-25/1074816130(1) dated 21.03.2025 passed by the Ld. CIT(A) u/s 250 of the Act, which is herein after referred to as the “**Impugned order**”.

The relevant assessment year is 2015-16 and the corresponding previous year period is from 01.04.2014 to 31.03.2015.

2. **Factual Matrix**

2.1 That as and by way of an " **Default order**" passed u/s **201(1) & 201(1A) of the Act by the DCIT(TDS), Bhopal dated 28.12.2021**, the assessee was found & deemed to be an Assessee in Default for **Short deduction of Tax** of Rs. 2,98,992/- u/s 201(1) of the Act-for AY 2015-16 & as per provision of section 201(1A), the assessee was held liable to pay simple interest at the rate of one percent per month on the amount of Default for AY 2015-16 which was calculated at **Rs. 2,60,123/-**. [CEPT University Ahmedabad] It was also found out in the order that for AY 2015-16, the assessee-deductor has made short deduction on payment made to **1. Spatial Decisions, 2. Prem Choudhary, 3. K.N. Gutgutia & Co.** at Rs. 81431/- u/s 201(1) of the Act. The interest was worked out at **Rs. 71,531/- u/s 201(1A)** on said amount. For non-deduction of TDS on interest payment to **HUDCO** for the

period prior to **20.03.2021** [194A] short deduction was worked out at **Rs. 3,42,61,000/- u/s 201(1A) and interest thereon was worked out at Rs. 3,18,61,000/- u/s 201(1A)**. For the payment made to “ **CEPT University**” the TDS was found to be deducted at 4% [194J] instead of 10%. The TDS Certificate downloaded from TRACES (Certificate No. III 5DE160H) it was also found that it is valid from **24.11.2014** to 31.03.2015. However, on 26Q of 3rd Quarter the assessee deductor had paid Rs. 48,62,400/- on 01.10.2014. Therefore lower TDS Certificate (supra) issued to the **CEPT University** is valid from 24.11.2014 to 31.03.2015 & not applicable on payment made before 24.11.2014 (payment made on 01.10.2014. TDS was deducted at 4% instead of 10% [194J]. The Assessee was in Default u/s 201(1) at Rs. 2,98,992/- & u/s 201(1A) at Rs. 2,60,123/-. **The total amount of Default** for (supra) Non-Deduction of TDS/ irregularity was worked out at Rs. 6,68,33,877 [u/s 201(1) & 201(1A)]. The aforesaid default order dated **28.12.2021** is herein after referred to as the “**Impugned Default Order**”.

2.2 The Assessee is Directorate of Urban Administrations Development, Bhopal which is Dept. of State Government of M.P. & is looking after all the administrative work carried out by various statutory bodies like Nagar Parishad, Nagar Nigam & Nagar Panchayats of M.P. It also carries out development of infrastructure, give guarantees Grants etc.

2.3 That the assessee being Aggrieved by the aforesaid **“Impugned Default Order”** prefers the first appeal **u/s 246A** of the Act before the Ld. CIT(A) who by the **“Impugned Order”** has dismissed the 1st appeal of the Assessee on the grounds & reasons stated therein. The core grounds & reasons for the dismissal of the 1st appeal are as under:-

“6. OBSERVATION AND DECISION:-

6.1 Notices u/s 250 of the Act were issued to the appellant through ITBA. Last notice was issued on 17/03/2025 requiring compliance on 20/03 /2025. But no compliance was made. During the course of appellate proceedings, appellant has not uploaded any written submission.

*6.2 On perusal of records, it is noticed that during the course of appellate proceedings, appellant had not filed or uploaded any response/written submissions in spite of **three notices** issued and delivered to the appellant. **The non-compliance of the appellant in response to the notices issued u/s 250 of the Act on various dates is summarized as under:***

<i>Sl No.</i>	<i>Hearing – Notice Date</i>	<i>Due date given for</i>	<i>Service of Notice on the e-mail given</i>	<i>Result</i>
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Directorate of Urban Administration & Development
ITA No. 477/Ind/2025 - A.Y.2015-16

	& email delivery date	compliance in the notice		
1	06/10/2023	16/10/2023	shrutigarg.1308@gmail.com ca.gargagrawal@gmail.com	No Compliance
2	13/03/2025	17/03/2025	shrutigarg.1308@gmail.com ca.gargagrawal@gmail.com	No Compliance
3	17/03/2025	20/03/2026	shrutigarg.1308@gmail.com ca.gargagrawal@gmail.com	No Compliance

6.3 The appellant has not filed any written submission and valid evidence for more than three years during the appellate proceedings, inspite of issuing three hearing notices by duly adhering to the principle of natural justice.

6.7 On perusal of the above order, and on merits of the case also, it is observed that **the DCIT, TDS, Bhopal has rightly Assessed the total liability as Rs. 6,68,33,877/-, in the order u/s 201(1)/201(1A) dated 28.12.2021, as the appellant has not substantiated the claim.**

6.8 **In this regard, it is pertinent to highlight that the Burden of Proof lies on the assessee. But in this case, the appellant has not made valid submissions with valid evidences, during the appellate proceedings also to substantiate the claim made in Form 35. Accordingly, the assessment order u/s 201(1)/201(1A) dated 28.12.2021 is upheld, as the appellant has not substantiated the claim.**

6.9 Moreover, considering the non-compliance as detailed above by the appellant, it seems that the appellant is not interested to pursue the appeal. The appellant has not made any submissions during the appellate proceedings. The appeal is also a long pending appeal relating to the **A.Y. 2015-16**. Therefore, it cannot be kept pending adjudication for indefinite period. If the appellant is not availing the opportunities given, they cannot allege contravention of principles of natural justice as held in the case of **P.N. Balasubramaniam (AP) 112 ITR 512**.

6.10 It must be mentioned here that the Hon'ble High Court of Madras in the case of **T.N.Subash Thangam vs Income Tax Officer, Non-Corporate Ward 17(7)** reported in 156 Taxmann.com 732 (2023) held that the assessee is duty bound to respond to notices, appear and offer explanation before the AO. In the instant case, inspite of giving sufficient opportunities, the appellant has failed to respond to the notices given and shown non co-operation.

6.11 In respect of the present appeal, inspite of giving sufficient opportunities by issuing **three** hearing notices **by duly following the procedure of principle of natural justice**, the appellant has failed to furnish any written submission and shown non co-operation.

6.12 **To conclude, on merits of the case, it is held that the above order is upheld and hence in the light of these observations, on merits of the case as well as due to the non-compliance of the appellant and failure to substantiate the claim made in Form 35, during the appellate proceedings also for more than three years, the grounds of appeal of the appellant stands dismissed.**

6.13 In the result, the appeal is **dismissed.**"

2.4 The assessee being aggrieved by the "**Impugned Order**" has preferred the instant second appeal before this Tribunal & has raised the following grounds of appeal in the Form No. 36 against the "**Impugned Order**" which are as under:-

"1. The learned Commissioner of Income tax (Appeal) was not justified in dismissing the appeal without appreciating that appellant was prevented with reasonable cause in not filing the response as appellant has not received any notices on registered postal address and thus appellant was not able to file response.

2. The learned Commissioner of Income tax (Appeal) was not justified in dismissing the appeal without appreciating that the delay in filing the response was unintentional as appellant is State Government Organization and was not aware of the fixation of appeal and on perusal of order also the learned CIT Appeal - Kochi have not given sufficient opportunity to file reply and even otherwise appellant have not received any notice of hearing.

3. The learned Commissioner of Income tax (Appeal) NFAC was not justified in levying the TDS provisions of interest paid to HUDCO and confirmed the finding of AO who determined the demand of Rs.6,61,21,800 without appreciating that the HUDCO is a 100 percent government owned company and was exempted from the TDS provisions in Notification No. S.O. 3489 dated 22.10.1970.

4. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in levying the TDS provisions of interest paid to HUDCO and confirmed the finding of AO who determined the demand of Rs.6,61,21,800 without appreciating that the HUDCO has already paid taxes on the interest earned by them and levying of TDS provision again on deductor would imply double taxation of same income.*

5. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in determining short deduction of TDS of Rs.2,98,992 alongwith interest of Rs.2,60,123 under section 194J on payment made to CEPT University without appreciating that the total bill raised by CEPT was Rs.37,44,960 which was partly paid in the concerned assessment year and the respective TDS on it, at the rate of 10%, i.e. Rs. 1,87,240 was deducted in the same year, which is duly reflected in Form 26AS and there is no short deduction in the concerned assessment year.*

6. *The learned Commissioner of Income tax (Appeal) NFAC was not justified in levying the TDS provisions on payment to Spatial Decisions, Prem Choudhary and K.N. Gutgutia & Co. and confirmed the finding of AO who determined the demand without appreciating that the short deduction certificate was issued by the deductee.*

7. *The appellant craves for leave to amend, add to or omit any ground up to the time of hearing of the appeal."*

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 21.01.2026 when the Ld. AR for & on behalf of the Assessee appeared before this Tribunal & interalia contended that the **"Impugned Order"** is bad in law, illegal & not Proper. It is in the violation of the principles of natural justice. It therefore deserves to be set aside. The Ld. AR has placed on the record of this Tribunal a compilation from pages

1 to 153 & Appeal Memo compilation from pages 1 to 58. The Ld. AR then took us to PB page 56 [Internal page of impugned Default order] where the issue about Non Deduction of TDS for HUDCO is discussed. The relevant paragraphs of it were read out. It was submitted that HUDCO was established in the year 1970 & is an Organisation completely owned by the Central Government & is a Public Financial Institution. It was submitted basis Notification No. **503489 [No. 170 CF No. 12/164/68-ITCC/OTJ]** dt. **22.10.1970** that the Assessee-deductor is not liable to deduct TDS on payment made to HUDCO as it is notified Public financial Institution. Reliance was placed on Page 14 of PB wherein there is a reference to this Notification by HUDCO's letter dt. 29.09.2022 to assessee which was relied upon. Attention was then invited to PB page 9 to demonstrate that HUDCO's 100% equity shares are held by the Government of India. Basis page 4 of PB it was contended that Annual Reports of HUDCO too shows that it's 100% equity are held by the Government of India as per HUDCO website pages. It was also submitted that the assessee argument now canvassed about the Constitution

that it is 100% owned by Govt. Of India be considered and admitted as additional material evidence **u/r 29 of the Income Tax Rules, 1963**. Our attention is invited to PB page 12 which is Certificate of accountant under first Proviso to sub-section (1) of section 201 of the Act. It was also submitted basis page 9 of PB that HUDCO has joint venture with 4 corporate too. Other contention like payment made to the CEPT University was discussed & it was submitted that there is no short payment. Copy of e-mail correspondences PB page 16 to 19 were relied upon. The extract of email dt. 02.04.2025 was read out by the Ld. AR to demonstrate that **"As per the CEPT University's books of accounts an invoice of Rs. 37.44 lacs (comprising Rs. 33.33 lacs + service tax) was raised on UADD. A payment of Rs. 16.85 lacs was subsequently received with tax deducted amounting to Rs. 1,87,248 lacs (TDS @10%). This tax deduction is duly reflected in the 26AS statement."** Further content of said e-mail were too read out. The payments were made to 3 other parties too. The Ld. AR finally contended that entire issue of payments & deductions of TDS is not clear & the necessary

records are old. The attempt & efforts of serious nature would now be made by the assessee to retrieve the old records & connected papers. The Assessee is Department Of Government of MP. Per contra, the Ld. CIT DR appearing for the revenue stated that the assessee being Dept. Of Government should be more responsible while dealing with the Income Tax Department & should comply law & be compliant in all aspects while dealing with Tax Dept. The matter was closed.

4. **Observations Findings & conclusions**

4.1 We have to decide the legality, validity and propriety of the **"impugned order"** basis records of the case & the rival submission canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case & after hearing & upon examining the rival contentions of the Ld. AR & the Ld. DR canvassed before us, are of the considered view that while the

“Impugned Default Order” of Ld. AO has spoken about the merits of the case & even the assessee has replied to the notices. But on the other hand we observe & notice that **“Impugned Order”** is Ex-parte with no participation of assessee. The assessee being Government itself now desires that they would make effective representation before Ld. AO after retrieving the old records. Revenue to expects the State Govt. Department to be responsible while dealing with tax matters particularly TDS payments. Under these facts & circumstances, we deem fit to set aside the **“Impugned Order”** and remand the matter back to Ld. AO on de novo basis, who shall now pass a fresh order with reasons. We direct the assessee to retrieve old records & make proper presentation before the Ld. AO on merits of the case. The issue now raised about payments made to HUDCO, CEPT, three private parties should be clearly spelt out before the Ld. AO in lucid manner including their contentions about Non-deduction of TDS to HUDCO basis Notification cited above & other contentions.

4.4 In view of the premises drawn up by us, we set aside the “**Impugned order**” and remand the case back to the Ld. AO on denovo basis who shall now pass a fresh speaking order which should be a reasoned one. The assessee to make effective representation as directed aforesaid. Assessee is directed not to seek adjournment on flimsy grounds.

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Order

5.1 In the result, the impugned order is set aside as & by way of remand back to the file of the Ld. AO on denovo basis.

5.2. In result, appeal of Assessee is allowed for statistical purpose.

Pronounced in open court on 30.01.2026.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

Dated : 30 /01/2026

Copies to:

(1)	The appellant
(2)	The respondent
(3)	CIT
(4)	CIT(A)
(5)	Departmental Representative
(6)	Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore